

MF 02-5

Tax Type: Motor Fuel Use Tax

Issue: Reasonable Cause on Application of Penalties

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

THE DEPARTMENT OF REVENUE)	
OF THE STATE OF ILLINOIS)	
)	Docket No. 01-ST-0000
v.)	Acct # 0-00000
)	
ABC FUEL CO.)	
)	
Taxpayer)	

RECOMMENDATION FOR DISPOSITION

Appearances: Kent Steinkamp, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; Neill Schurter, Attorney at Law, for ABC Fuel Co.

Synopsis:

The Department of Revenue (“Department”) issued a Notice of Assessment to ABC Fuel Company (“taxpayer”) for tax, penalty, and interest as a result of the late payment of the taxpayer’s motor fuel taxes. The taxpayer timely protested the Notice. The taxpayer does not contest the tax but requests that the penalty be abated due to reasonable cause. For the following reasons, it is recommended that this matter be resolved in favor of the Department.

FINDINGS OF FACT:

1. The taxpayer is in the business of selling gasoline and diesel fuel in bulk to gas stations, farmers, contractors, and industrial companies. (Tr. p. 18)

2. On December 20, 2000, the taxpayer sent a check to the Department for \$86,745.33 for its motor fuel tax liability for the month of November 2000. The tax was due on December 20, 2000. (Dept. Ex. #3; Tr. p. 22)

3. The check was returned to the taxpayer due to the fact that there were not sufficient funds in the taxpayer's account to cover the check. (Dept. Ex. #3)

4. On January 26, 2001, the Department issued a Notice of Assessment to the taxpayer for the tax owed, a late payment penalty of 20% of the tax owed, and interest. The Notice was admitted into evidence under the certificate of the Director of the Department. (Dept. Ex. #1)

5. In January 2001, the taxpayer paid the tax that was due on December 20, 2000. (Tr. p. 25)

CONCLUSIONS OF LAW:

The Department imposed the penalty for the late payment of the motor fuel taxes pursuant to section 3-3 of the Uniform Penalty and Interest Act (UPIA) (35 ILCS 735/3-1 et seq.) Section 3-8 of the UPIA provides a basis for the abatement of the section 3-3 penalty and states in part as follows:

“The penalties imposed under the provisions of Sections 3-3, 3-4, and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause. Reasonable cause shall be determined in each situation in accordance with the rules and regulations promulgated by the Department.” (35 ILCS 735/3-8)

The Department's regulations concerning reasonable cause provide as follows:

“The determination of whether a taxpayer acted with reasonable cause shall be made on a case by case basis taking into account all pertinent facts and circumstances. The most important factor to be considered in making a determination to abate a penalty will be the extent to which the taxpayer made a good faith effort to determine his proper tax liability and to file

and pay his proper liability in a timely fashion.” 86 Ill.Admin.Code §700.400(b)

The taxpayer contends that it made a good faith effort to timely pay its liability. The taxpayer has been paying taxes to the Department for 24 years and has always paid its tax liability. In November of 2000, the cost of gasoline was going up considerably faster than what the taxpayer was selling it for, and the taxpayer was having cash-flow problems. Also, one of the taxpayer’s suppliers made a withdrawal from the taxpayer’s account the day before the check was presented that was larger than the taxpayer anticipated. The taxpayer contends that it timely presented a check to the Department even though there were not sufficient funds to pay the check. The taxpayer states that in the past when the bank did not honor a check for not-sufficient funds, the check was sent back to the Department and the Department presented the check a second time. The taxpayer argues that it was expecting the same process this time. The taxpayer also states that for tax returns due on or after January 1, 2001, the late-payment penalty has been reduced to 2% of the tax instead of the 20% that was imposed in this case. The taxpayer contends that the change in the penalty indicates that the legislature recognized that it was unduly harsh. The taxpayer argues that these circumstances warrant an abatement of the penalty.

The reasons provided by the taxpayer are not sufficient to abate the penalty. Although the taxpayer timely presented a check, there was not enough money in the taxpayer’s account to cover it. The taxpayer admitted that this same error had occurred previously, and the taxpayer did not indicate that it had attempted to prevent this error from occurring again. The taxpayer simply relied on the expectation that the Department would re-submit the check. The taxpayer’s vice president testified that payment for the

fuel is automatically taken out of its account within ten days of the delivery of the fuel, and then the taxpayer's customers pay within 30 days (Tr. pp. 20-21). This billing method has not been changed to ensure adequate funds to cover the checks. In addition, the taxpayer owns three of the stations that purchase its fuel, so the taxpayer actually pays itself for some of the fuel (Tr. p. 20). Although the payment to one of the taxpayer's suppliers was larger than anticipated, the taxpayer's officer testified that the increase in gas prices occurred during the entire autumn period of 2000 (Tr. p. 22). If the prices were increasing throughout this time period, it is unclear why a payment in December of 2000 would be larger than anticipated. Although the amount of the penalty is unusually high, these facts do not warrant abating the penalty.

Recommendation:

For the foregoing reasons, it is recommended that the penalty be upheld.

Linda Olivero
Administrative Law Judge

Enter: April 18, 2002